

**62A-4a-208 Child protection ombudsman -- Responsibility -- Authority.**

(1) As used in this section:

- (a) "Complainant" means a person who initiates a complaint with the ombudsman.
- (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2)

- (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.
- (b) The ombudsman shall be:
  - (i) an individual of recognized executive and administrative capacity;
  - (ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and
  - (iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.
- (c) The ombudsman shall devote full time to the duties of office.

(3)

- (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:
  - (i) is contrary to statute, rule, or policy;
  - (ii) places a child's health or safety at risk;
  - (iii) is made without an adequate statement of reason; or
  - (iv) is based on irrelevant, immaterial, or erroneous grounds.
- (b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.
- (c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:
  - (i) receiving and processing complaints;
  - (ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;
  - (iii) prioritizing workload;
  - (iv) maximum time within which investigations shall be completed;
  - (v) conducting investigations;
  - (vi) notifying complainants and the division regarding the results of investigations; and
  - (vii) making recommendations based on the findings and results of recommendations;
- (b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;
- (c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;
- (d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;
- (e) annually report to the:
  - (i) Child Welfare Legislative Oversight Panel;
  - (ii) governor;
  - (iii) Division of Child and Family Services;
  - (iv) executive director of the department; and

- (v) director of the division; and
  - (f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.
- (5)
- (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.
  - (b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.
  - (c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.
  - (d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody, as that term is defined in Section 78A-6-105.
  - (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.
- (6)
- (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.
- (7)
- (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.
  - (b) The ombudsman shall make recommendations to the division if the ombudsman finds that:
    - (i) a matter should be further considered by the division;
    - (ii) an administrative act should be addressed, modified, or canceled;
    - (iii) action should be taken by the division with regard to one of its employees; or
    - (iv) any other action should be taken by the division.

Amended by Chapter 75, 2009 General Session